



Submission to:

Productivity Commission

***‘Draft Report Mineral and Energy Resource
Exploration – May 2013’***

ASSOCIATION OF MINING AND EXPLORATION COMPANIES (AMEC)

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Introduction

1. Thank you for the opportunity to provide input to the Productivity Commission`s draft report on *“Mineral and Energy Resource Exploration – May 2013”*.
2. The Association of Mining and Exploration Companies (AMEC) is the peak national industry body for mineral exploration and mining companies within Australia. The membership of AMEC comprises over 360 explorers, emerging miners and the companies servicing them.
3. AMEC’s strategic objective is to secure an environment that provides clarity and certainty for mineral exploration and mining in Australia in a commercially, politically, socially and environmentally responsible manner.
4. AMEC representatives appeared before the Commissioners at the public hearing on 27 June 2013 in Perth. At this hearing AMEC committed to providing more information on a number of the issues raised. This submission therefore provides this additional information as well comments on the draft recommendations and the issues where the Productivity Commission (PC) has requested more information in the draft report.
5. In this submission the terms ‘exploration’, ‘mineral exploration’, ‘exploration industry’ all refer to minerals exploration only and does not include any reference to petroleum, oil, gas or coal seam gas.

Executive summary

6. AMEC supports the general thrust of the recommendations made by the PC. However, AMEC considers that the recommendations are soft and fail to offer any tangible solutions to substantially reduce the cost of regulation and the many barriers to exploration. The recommendations merely affirm good regulatory practice that governments should be undertaking as a matter of course. However this could be due to the PC’s use of the generic term ‘governments’ throughout the recommendations. If there are specific State or Territory governments that the recommendations are directed because of the evidence collected by the PC, then the PC should identify them so that those governments can undertake a process to remove barriers from their regulatory system.
7. AMEC considers that further streamlining of the overall approvals process through all Australian jurisdictions is a fundamental issue that requires addressing. AMEC has therefore made various recommendations in this regard.
8. AMEC also notes with some disappointment the lack of any recommendation/s on what is the most appropriate approvals ‘model’, or the ‘features’ of best practice processes that could be applied to such a framework.

Recommendations

AMEC recommends that the Productivity Commission:

1. **Recommends that all approvals agencies at the Federal, State and Territory levels:**
 - **Identify where any duplications might be occurring, and implement strategies to eliminate any identified and unnecessary overlapping administrative and decision making processes,**
 - **Drive increased efficiencies by reviewing and promoting a reduction in timelines, develop and implement clear escalation policies, parallel processing, delegation of responsibilities, and the development of approvals related training packages,**
 - **Increase transparency and accountability through publicly available performance indicators and reports; integrated environmental, heritage and geological data libraries; integrated on line lodgement and tracking systems**
2. **Undertake economic modeling to ascertain potential administrative savings to the industry by reducing the regulatory approval timelines that currently exist,**
3. **Dismiss cash bidding as an appropriate allocation method for Australian mineral resources,**
4. **Consider AMEC's principles for best practice exploration regulation,**
5. **Strengthen Recommendation 3.5 in order to improve reporting practices,**
6. **Dismiss cost recovery as a policy option for the minerals exploration industry,**
7. **Conclude that compensating EL's holders for the delays that occur between the grant of the tenement and when approval is given to undertake exploration is too complex to provide an equitable solution,**
8. **Recommends that environmental offsets are not appropriate for exploration activities.**

Financial Barriers to Exploration in Australia

9. A significant factor in the decline in Australia's standing in global exploration has unfortunately been omitted from the terms of reference of this inquiry - financial barriers. While there are many factors that impact exploration are outside of the control of Australian governments, such as the state of the global equity markets, their fiscal policies on taxation and royalties is one area that has a significant impact on investor's decisions to invest in Australia.
10. AMEC considers that one such financial-based policy solution can stimulate the minerals exploration industry. AMEC is a strong advocate of the Minerals Exploration Tax Credit (METC). The METC model recommended by AMEC is a combination of the

- very successful Canadian Flow Through Shares (FTS) model, Australia's franking system and a tax credit.
11. The model proposes that accumulated losses incurred by Australian companies with 'no assessable' income can voluntarily pass those losses, by way of the tax credit, through to their Australian resident shareholders at the company tax rate by using a system that is based on Australia's well known franking system.
 12. Australian shareholders would therefore receive a benefit after the eligible expenditure has been incurred, rather than the current situation where the losses are 'trapped' in the company for many years or never used at all.
 13. The model will promote direct investment in on-the-ground greenfield exploration drilling programs, i.e. metres drilled, because participating companies will be able to voluntarily pass a percentage of 'eligible exploration expenditure' to shareholders through the METC.
 14. AMEC has fine-tuned the METC model, and commissioned KPMG to undertake research on the 'Impact of the Minerals Exploration Tax Credit'. The research will provide an indication of the cost to revenue, and the significant economy wide benefits that are achievable. The research is soon to be released and will be forwarded to the Commission for information, consideration and referencing in the Final Report.
 15. AMEC also considers that a stable, internationally competitive, efficient and fair taxation regime, and comparatively low operating costs are fundamental financially based pre-cursors to exploration activity.

Comments on the Draft Report

16. Overall the Draft Report is a comprehensive summary of the state of the exploration industry in Australia. AMEC is pleased that the PC has independently highlighted and confirmed the substantial regulatory barriers to exploration in Australia. However, in AMEC's view the report does not provide sufficient economic modeling to compel regulatory agencies to significantly reform regulatory practices that would ultimately provide greater benefits to Australia from its natural resource endowment.
17. AMEC considers that further streamlining of the overall approvals process (objections, environmental, native title and heritage) through all Australian jurisdictions is a fundamental issue that requires addressing. However, the Draft Report does not appear to have afforded this issue a high priority.
18. AMEC supports the general thrust of the recommendations made by the PC. However, AMEC considers that the recommendations are soft and fail to offer any tangible solutions to substantially reduce the cost of regulation and the many barriers to exploration. The recommendations merely affirm good regulatory practice that governments should be undertaking as a matter of course. However this could be due to the PC's use of the generic term 'governments' throughout the recommendations. If there are specific State or Territory governments that the recommendations are directed because of the evidence collected by the PC, then the PC should identify them

so that those governments can undertake a process to remove barriers from their regulatory system.

Recommendation:

AMEC recommends that the Productivity Commission recommend that all approvals agencies at the Federal, State and Territory levels:

- **Identify where any duplications might be occurring, and implement strategies to eliminate any identified and unnecessary overlapping administrative and decision making processes,**
- **Drive increased efficiencies by reviewing and promoting a reduction in timelines, develop and implement clear escalation policies, parallel processing, delegation of responsibilities, and the development of approvals related training packages,**
- **Increase transparency and accountability through publicly available performance indicators and reports; integrated environmental, heritage and geological data libraries; integrated on line lodgement and tracking systems**

Other Issues

Administration Costs

19. In AMEC's original submission dated March 2013 we highlighted the point that time is money and delays in approvals means less on-the-ground exploration can be completed because resources are consumed by administrative costs. In order to provide more substance to this statement AMEC has analysed the administration costs of greenfields explorers. The data AMEC has used is a combination of the Australian Bureau of Statistics (ABS) 8412 data¹ and data extracted from individual companies Mining Exploration Entity Quarterly Report (Form 5Bs, which are submitted to the Australian Stock Exchange each quarter).
20. AMEC has obtained a copy of the ABS's survey instrument it sends to Australian exploration companies to collect exploration data. According to the ABS, exploration expenditure is defined as all costs incurred during the exploratory or evaluation stages and these include expenditure associated with exploration, determination of recoverable reserves, engineering and economic feasibility studies, procurement of finance, gaining access to reserves, construction of pilot plants and all technical and administrative overheads directly associated with these functions.
21. For the purposes of understanding the costs associated with obtaining approvals, we need to understand the level of administrative costs included in the ABS data. AMEC has sampled approximately 50 Form 5B's from companies undertaking greenfields exploration in Australia. These forms identify exploration costs, other costs and administration costs. This sample indicates that an average of 28 per cent of total expenditure is categorised as administration. These costs continue to be incurred during the pre-approval process and ultimately reduce the equity capital available for exploration activities once approval is granted. The longer the approval process – the greater the direct administrative cost and inefficient use of capital.

¹ Australian Bureau of Statistics (2013), Mineral and Petroleum Exploration, cat. no. 8412.0, March 2013

22. AMEC has not attempted to extrapolate this information to calculate what savings could be made by reducing approval timelines, however, based on 2011/12 ABS greenfields exploration expenditure “administration” accounts for approximately \$348 million of the total \$1.243billion. AMEC considers this data could be used to generate some modeling to determine the potential administrative savings to the industry by reducing approval timelines.
23. In AMEC’s March 2013 submission to the Issues Paper we did not raise the issue of tenement rents given the focus of the inquiry. However, in the context of calculating the cost of approval delays, these are important. AMEC understands that the state and territory governments begin charging rates and fees from the moment the tenement application is made. Therefore, while the necessary approvals are being obtained, exploration companies are paying for the right to explore but without access approval. This also reduces their equity reserves.
24. AMEC has analysed the annual rental fees for exploration tenements across jurisdictions and provides this information below. AMEC recognises that these rates form part of the competition between States and hence the differences. However, when taken in combination with regulatory delays, each jurisdiction while have a different cost profile.

Annual Rental Fee					
WA	SA	QLD	NSW	NT	Tas
Yrs 1-3 \$34.13/km ² Yrs 4-5 \$53.07 Yrs 6-7 \$72.01 Yrs 8+ \$136.36	\$8.75/km ²	\$46.92/km ²	\$20/km ²	Yr 1&2 - \$9.36/km ² Yr 3&4 - \$19.01/km ² Yr 5&6 - \$38.32/km ² 7+ - \$53.53/km ²	for each of first 2 years \$28.74/km ² for each subsequent year \$57.50/km ²

Recommendation:

AMEC recommends that the PC undertake economic modelling to ascertain potential administrative savings to the industry by reducing the regulatory approval timelines that currently exist.

Cash Bidding

25. AMEC considers that the PC has not properly distinguished between the different sectors of the resources industry, i.e., onshore, offshore, greenfields, brownfields, minerals, oil and gas in its analysis of allocation methods. There are significant differences between the sectors that need to be taken into account, including size, scale, capital investment, number of operators.
26. Although it has not made such a recommendation, AMEC does not consider the PC has made the case that cash-bidding for ‘minerals’ tenements is an effective allocation method for Australia. Cash bidding relies upon a significant level of competition between explorers to generate returns to the Government. AMEC argues that competition does not sufficiently exist to justify cash-bidding and that cash bidding

would reduce the amount of land under minerals exploration. Furthermore, without the other side of the equation, i.e. that cash bidding's effect on royalty streams AMEC is of the view that the PC's report misleads the reader to conclude that cash bidding is an acceptable allocation method.

27. By the PC's own admission

"A full assessment of exploration tenement allocation mechanisms requires consideration of the link between cash bidding and subsequent royalty payments. However, given that examination of financial barriers to exploration (including royalty and tax arrangements) is excluded from this inquiry's terms of reference, it has not been possible for the Commission to fully compare the relative merits of alternative allocation mechanisms for exploration licences."

28. The Draft Report discusses the issue of tenements won by cash bidding that may also be required to submit work programs for approval. This was also raised at the June 27 public hearing by the PC. Commissioner Woods said at the hearing *"The one thing that we did form a fairly firm view on was that if you have cash bidding you don't then at the same time do a program of works bidding. Obviously you have to have a subsequent program of works to generate your approvals but you don't try and put the two together"*. AMEC agrees with this principle.

Recommendation:

AMEC recommends the PC dismiss cash bidding as an appropriate allocation method for Australian mineral resources

Principles of Exploration Regulation

29. At the June 27 2013 hearing the PC Commissioners requested AMEC give consideration to the principles of best practice exploration regulation, including those presented by the PC. AMEC also supports the COAG Principles of Best Practice Regulation and the Multiple Land Use Framework. This inquiry is evidence in itself that in both cases the implementation by regulatory agencies has not met industry expectations.
30. In this context AMEC provides these principles for best practice exploration regulation:
- exploration is fundamental to understand Australia's resource endowment
 - first in, first serve tenement allocation with an efficient and effective dispute resolution mechanism
 - promotes ground turnover while allowing flexibility to account for special circumstances
 - prevents tenement warehousing and speculation by only permitting bona fide tenement applications
 - Governments must fund pre-competitive geoscience information and make it freely available to the exploration industry
 - exploration is a discrete activity not linked to other pre or post exploration activities
 - recognition that exploration is a time sensitive activity

- exploration is a transient activity

Recommendation:

AMEC recommends the PC consider AMEC's principles for best practice exploration regulation in its Final Report.

Prescribed timelines

31. This relates to Recommendation 3.5

Governments should ensure that their regulators publish target timeframes for approval processes, including exploration licensing and related approvals (for example environmental and heritage approvals). The lead agency for exploration should publish whole-of-government performance reports against these timeframes on their website.

32. The PC Commissioners at the public hearing requested AMEC to provide more information on the value proposition of certain regulatory process reforms to the industry.

33. Published timelines are a compromise between a proponents need for immediacy of approval and the regulators need to consider the regulatory risks.

34. Without a doubt proponents want their approvals immediately so they can get on with their development. On the other hand regulators will deliver the approval as soon as possible after considering the regulatory risk. A published timeline provides certainty for the proponent; the shorter the timeline the closer the immediacy desired by the proponent.

35. It is well understood that monopoly suppliers of goods and services can become complacent and inefficient. For the regulator as the monopoly supplier of the regulatory service, the timelines provide discipline in the system such that it creates incentives to be more efficient and publicly accountable.

Data and Information to monitor regulatory performance

36. A significant issue that has confronted AMEC in providing submissions to this inquiry (and the Development Approvals inquiry) is the lack of data on the regulatory processes and performance. There is no standard reporting framework on regulatory performance. For industry groups such as AMEC it is difficult to address issues in the system when they are hidden from view. While AMEC recognises the PC has provided guidance in Recommendation 3.5, AMEC considers the recommendation does not go far enough to compel agencies to improve reporting practices.

Recommendation:

AMEC recommends that the PC strengthen Recommendation 3.5 in order to improve reporting practices

The Efficiency Rationale for Online Systems

37. AMEC considers online applications (such as work programs) and the ability to track them have numerous benefits. Well designed online application systems, because of their defined fields (which are in fact representing the stated policy), create discipline in

the data entry to ensure that only the information required for assessment is submitted. This saves proponent time and resources, and ensures that required data is provided at the time of lodgement. It also means that the assessing officer is only dealing with information related to policy and the risks presented to that policy by the exploration application. Therefore, assessing officer subjectivity is significantly removed from the process and the real risks can be assessed.

38. The ability to track the application within the agency and across government approval agencies provides certainty for the applicant for planning purposes. Online systems should be moving towards a process where proponents can self-assess and gain approval with minimal need for regulatory oversight.

Cost Recovery

Cost Recovery Generally

39. AMEC is strongly opposed to government imposition of cost recovery on industry for regulatory activities.
40. Australian governments regulate a wide variety of activities in the broad interest of the Australian community. It is too simplistic to suggest that the stakeholder group generating the need for regulation should pay for the regulation. Governments collect considerable revenue from the community, including industry, to fund the administration of regulations. AMEC considers that the imposition of cost recovery is blatant cost shifting from government to industry.
41. In AMEC's very strong view, cost recovery should be a last resort policy option, and only after all the efficiencies available in the regulatory system have been realised. Unfortunately this does not always appear to be the case.
42. AMEC notes that the Federal Government Department of Finance and Deregulation has recently released an updated version of the Australian Government Cost Recovery Guidelines. AMEC considers that these revised guidelines provide significantly more rigor to the decision making and implementation processes used to introduce cost recovery. This includes giving a higher priority to stakeholder consultation.

Cost Recovery for Precompetitive Geoscientific data

43. The PC has provided significant evidence for the free provision by government of pre-competitive geo-science data. Therefore the PC's recommendation that governments should monitor the results of NSW cost recovery process invites other agencies to also consider such a funding initiative.
44. AMEC has evidence to suggest that the recently implemented NSW model has had an adverse impact on exploration activity in NSW. Since the introduction of the New Frontiers Levy, there has been a significant relinquishment of exploration licences with no requisite uptake of holdings by exploration companies in NSW. Even during the global financial crisis (GFC) at the end of 2008, the rate of relinquishment was not as pronounced as it is now. This is displayed in Figure 1. The data for this graph was sourced from NSW MinView².

² MinView allows on-line interactive display and query of exploration tenement information and geoscience data. It allows spatial selection, display and download of geological coverages, mineral

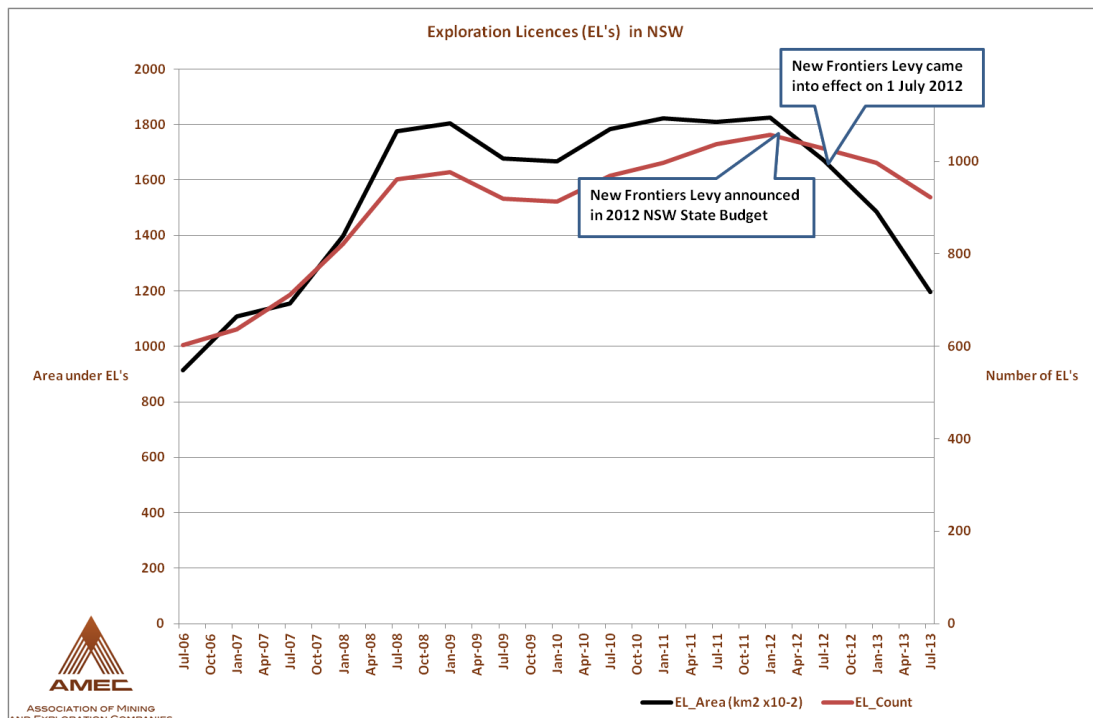


Figure 1

45. This suggests that the introduction of the levy has had a negative impact on minerals exploration. The obvious conclusion is that the government will need to increase fees to cover the loss of forecast revenue, which will force more relinquishment and perpetuate the cycle.
46. In AMEC's view the NSW 'Cost recovery' model is not cost recovery for service provision at all and is in fact a tax. The NSW model imposes the charge across all tenement holders, regardless of the activity occurring for the use by a specific group of industry stakeholders.

Recommendation:

AMEC recommends that the PC dismiss cost recovery as a policy option for the minerals exploration industry.

Industry Consultation

General Consultation

47. AMEC's view is that regulators which have embraced consultation to its full extent have reaped the rewards of better regulatory process and improved industry buy on. However, there are regulators that have not met industry expectations for proper and meaningful consultation.

Precompetitive Geoscientific data

48. AMEC considers there are considerable benefits for a broader consultation with industry on proposed work plans. As the PC states in its draft report "Rigorous priority setting and performance management processes are important means of ensuring that

deposits and mine locations, geophysical survey boundaries, drillhole locations, historical and current exploration title boundaries and other spatial datasets of New South Wales.

public funding is allocated effectively”³. Given the end users of the information are the explorers, it would appear sensible to obtain from them information about the priority regions they wish to explore.

Granting of Tenements and Approvals

49. In the draft Report the PC has sought more information on the most appropriate way to change exploration tenure so that the time taken for regulatory compliance does not reduce the amount of time to explore before the tenement life expires. At the hearing on 27 June, the Commissioners also requested this advice. The PC Draft report provided three options to provide an equitable solution to compensate EL’s holders for the delays that occur between the grant of the tenement and when approval is given to undertake exploration. The three options provided by the PC are:
- extending the licence period by one year;
 - extending the licence by a period of time that reflects the average increase in the time taken for regulatory compliance; or
 - starting the licence period after all approvals have been granted and exploration can commence.
50. AMEC contends, like the PC has concluded in the draft report, that each option has both identifiable but probably also unintended consequences. AMEC considers that trying to find solutions to this problem treats the symptoms and not the cause. The complexities of the issue suggests that resources would be best spent fixing the approvals system.

Recommendation:

AMEC recommends the PC conclude that compensating EL’s holders for the delays that occur between the grant of the tenement and when approval is given to undertake exploration is too complex to provide an equitable solution.

Environmental Offsets

51. Environmental offsets are not often applied to impacts resulting from exploration, however AMEC is concerned that as they appear to be regularly applied as a matter of course as part of the approval process for all impacts; it is likely they could be applied to minerals exploration. This would be completely inappropriate given their role is to compensate for significant residual impacts.
52. To illustrate the point that this possibility is real, consider the EPBC Act approval⁴ (and subsequent variation) for further exploration work for the Tropicana gold project 300km ENE of Kalgoorlie. The management measures placed on the project by the approval conditions are potentially excessive to the level of impact resulting from the exploration.
53. It is AMEC’s view that environmental offsets should never be applied to exploration programs. If environmental offsets are applied to exploration programs, then the regulatory response is not in any way proportionate to the level of impact and is therefore inappropriate.

³ Page 220, Productivity Commission, Mineral and Energy Resource Exploration, Draft Report May 2013, Canberra.

⁴ www.environment.gov.au/epbc/notices/assessments/2008/4463/2008-4463-decision-notice.pdf, and variation www.environment.gov.au/epbc/notices/assessments/2008/4463/2008-4463-variation-notice.pdf

Recommendation:

AMEC recommends that environmental offsets are not appropriate for exploration activities.